

THE
PACIFIC RAILROADS,
AND
THE RELATIONS
EXISTING BETWEEN THEM
AND THE
GOVERNMENT OF THE UNITED STATES.

NEW YORK,

1879.

The Bancroft Library

University of California • Berkeley

THE
PACIFIC RAILROADS,
AND
THE RELATIONS
EXISTING BETWEEN THEM
AND THE
GOVERNMENT OF THE UNITED STATES.

Henry Villard, 1812-1905

NEW YORK,

1879.

3 WEST 21ST STREET,
NEW YORK, 27 Feb., 1879. }

HENRY V. POOR, Esq. :

Dear Sir :

I understand that you have prepared a paper concerning the legal relations of the Union Pacific Railroad Company to the Government under the decisions of the Supreme Court of the United States. Not doubting from your connection with the enterprise in its incipient stages, and from the attention you have given to the subject to the present time, that your paper will be calculated to correct some prevailing misapprehensions, I trust it will find its way to the public.

I have had no stock in the Company since my resignation as President ten years ago ; nor have I been concerned in any way with its transactions, or any outside movements relating to it. But I regard it as one of the great enterprises of the age, the rapid accomplishment of which caused more astonishment in other countries than anything we have achieved, and as a larger contributor to our growth and prosperity than any one other cause. I do not doubt that it will continue to be so, whatever combinations may be formed by speculators in Wall Street to enhance or depress the market value of its stock.

I did not, as you know, approve or assent to the Credit Mobilier contracts, which were made while I was in Europe ; but this is a matter entirely apart from the legal relations of the Company to the Government. These should be understood by the whole community—not only for the purpose of removing misconception, by which the public mind is unjustly prejudiced, but to prevent legislative bodies, under the influence of the prevalent and not unnatural jealousy of large corporations, from being misled and hurried into ill-considered and unauthorized enactments.

Yours truly,

JOHN A. DIX.

16892
Pancroft Library

THE UNION PACIFIC AND THE CENTRAL PACIFIC RAIL-
ROADS AND THEIR RELATIONS TO THE
UNITED STATES.

New York, 6 March, 1879.

HON. JOHN A. DIX,

Dear Sir:

Recent decisions of the Supreme Court of the United States, the Tribunal of final resort, have at last established and defined beyond controversy the respective rights of the two Pacific Railroad Companies and those of the Government, growing out of the act for their incorporation; the acts additional thereto; the issue of bonds by the Government in aid of, and the contracts for, the construction of the Roads of the two Companies.

ACT INCORPORATING THE PACIFIC COMPANIES, AND THE GOVERN-
MENT SUBSIDY.

J. B. Phelan estate, 1932

The Act of Congress of July 1, 1862, incorporating the Union Pacific Company, the Central Pacific deriving its charter not from the United States, but from the State of California, provided for the issue of bonds by the Government in aid of the Roads, equaling \$16,000, \$32,000, and \$48,000 per mile, according to the character of the country traversed, the intention being to apportion the bonds in ratio to cost. The bonds were simply obligations of the Government, to which the Railroad Companies were in no way parties. The bonds were six per cents, payable in thirty years; the interest payable semi-annually. To secure the payment of both principal and interest, a first mortgage was created, by statute, upon the respective Roads. For the payment of the principal and interest thus secured it was provided by the act of incorporation (sec. 6) that:

"All compensation for services rendered for the Government shall *be applied* to the payment of said bonds and interest until the whole amount is fully paid; * * * * and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of the said road shall *also be annually applied* to the payment thereof."

The companies thus chartered were duly organized, but so hazardous was the enterprise regarded that no parties possessing adequate capital could be found to embark in it. The feeling in reference to it was well expressed by Hon. Justin S. Morrill, at that time one of the leading and best informed members of the House. In a speech in reference to the project, pending the passage of the Bill, he said:

"I am not to be deceived by any promises that this is to be built and run by any other parties than the United States. Every dollar that it takes to construct the road is to be contributed by the United States. There is not a capitalist that will invest a dollar in it if he is to be responsible, for any considerable distance. * * * If it could be constructed it could not be kept in operation except at the expense of the government. If this road were built to-day, therefore, and given to the United States, the United States are not in a condition to accept it, even as a gift, if compelled to run it; nor will they be till the population has so far increased as to give the road some freight and some local business. As a commercial and economical question such road is utterly defenseless." (See Con. Globe, 2d Session 37 Congress, Page 1,708.)

Mr. Morrill, in his speech, only too faithfully represented the conviction which prevailed among conservative minds, and capital is always conservative, in reference to the project. No sooner was it seen that the provision made was wholly inadequate than Congress, more than ever impressed with its necessity, passed, on the 2d of July, 1864, an act, in addition to that of 1862, providing that:

"Only one-half of the compensation for services rendered the Government by the said companies shall be required and applied to the payment of the bonds issued by the Government in aid of the construction of said roads." And further, section 10 of said act, "that the section five (of the act of 1862) be so modified and amended that the Union Pacific and Central Pacific Railroad Companies * * * may issue their first mortgage bonds on their respective railroads and telegraph lines to an amount not exceeding the bonds of the United States, and of even tenor, date, time of maturity, rate and character of interest, with the bonds authorized to be paid to said Railroad Companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of either of said companies hereby authorized to be issued on their respective roads, property, and equipment."

The amended bill not only practically doubled the amount of the Government subsidy, but relieved the Companies of the burden of Government transportation by allowing them to be paid one-half the charges. This provision, it was assumed, would avoid all loss. With their means so increased they at once entered upon the work of construction, and opened the whole line within a period of seven years from the date of the act of incorporation, although they were allowed by it fifteen years therefor.

The roads of the two Companies were no sooner opened than questions naturally arose between them and the Government involving the obligation of the Companies to repay to the Government a sum equal to the interest on its bonds as the same falls due; and the right of the Government to withhold, on account of such interest, all payment for transportation services rendered it; the sum upon which the five per cent. of net earnings should be cast; and the right of the Government to inquire into the contracts

and other matters growing out of the construction of the road of the Union Pacific Company.

FIRST :—THE OBLIGATION OF THE COMPANIES TO PAY THE INTEREST ACCRUING ON THE GOVERNMENT SUBSIDY, AND THE RIGHT OF THE GOVERNMENT TO WITHHOLD ALL TRANSPORTATION CHARGES ON ITS ACCOUNT.

The first of these questions was settled, or was supposed to be settled, by an Act (Section 9) of Congress, of March 3d, 1871, which provided that :

“The Secretary of the Treasury is hereby *directed* to pay over, in money, to the Pacific Railroad Companies mentioned in said Act, and performing services for the United States, *one-half* of the compensation, at the rate provided by law, for said services heretofore or hereafter rendered.”

Payment of one-half of the charges on account of Government transportation continued to be made under the provision of this Act, until January 1, 1873. On the 3d of March of that year, Congress passed an Act which, among other things, provided (Section 2) that :

“The Secretary of the Treasury is directed *to withhold* all payments to any railroad company and its assigns on account of freights or transportation over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to such company, and which shall not have been reimbursed, together with the five per cent. of net earnings due and unapplied, as provided by law; and any such company may bring a suit in the Court of Claims to recover the price of such freight and transportation; and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined; and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them; and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business.”

Under the provision of this act, the Union Pacific Railroad Company brought an action in the Court of Claims to recover of Government one-half of the transportation charges on its account from January 1, 1873, to March 1, 1874. The defense was that as a very large sum had been paid by the Government, on account of interest on its bonds issued to that road, it might properly offset such payments against the claim set up against it. The Court of Claims held such payments to be no defense, and gave judgment to the Company for the sum of \$512,632.50, and dismissed the counter claim of the Government. An appeal was then taken by the Government to the Supreme Court of the United States, which sustained the decision of the court below. In its decision, made October term, 1875 (Justice Davis rendering the opinion), the Court said :

"The proposition for the Government to retain the amount due the Company for services rendered, and apply it toward the general indebtedness of the Company to the Government, *cannot be construed into a requirement that the company shall pay the interest from time to time and the principal when due.* It was in the discretion of Congress to make this requirement, and then, as collateral to it, provide a special fund or funds out of which the principal obligation could be discharged. This Congress did not choose to do, but rested satisfied with the entire property of the company as security for the ultimate payment of the principal and interest of the bonds delivered to it. * * * * *

There is enough in the scheme of the act, and in the purposes contemplated by it, to show that *Congress never intended to impose on the corporation the obligation to pay current interest.* The act was passed in the midst of war, as has been stated, when the means for national defense were deemed inadequate to the wants of the country, and the public mind was alive to the necessity of uniting by iron bands the destiny of the Pacific States with those of the Atlantic. Confessedly, the undertaking was outside of the ability of private capital to accomplish, and only by the helping hand of Congress could the problem, difficult of solution under the most favorable circumstances, be worked out. Local business, as a source of profit, could not be expected while the road was in course of construction, on account of the character of the country it traversed; and whether when completed, as an investment, it would prove valuable, was a question for time to determine. But vast as the work was, limited as were the private resources to build it, the growing wants of the country, as well as the existing and future military necessities of the Government, demanded that it be completed. Under the stimulus of these considerations, Congress acted. It did not act for the benefit of private persons, nor in their interest, but for an object deemed essential to the security of the country, as well as to the prosperity of the country."

By this decision the two questions first raised—that of the obligation of the Companies to repay to the Government the interest on its bonds as it accrued; and of the right of the latter to retain for such payment the whole of the transportation charges on its account—were decided wholly in favor of the Companies. The accruing interest, it was decided, was a debt not due till the bonds were due, except so much of it as could be met by the application thereto of one-half the transportation charges on Government account, and of five per cent. of the net earnings of the Companies.

SECOND:—THE FIVE PER CENT. NET EARNINGS—HOW TO BE DETERMINED.

Government still refusing to pay over to the Union Pacific Company one-half of the charges on account of transportation, as provided by the act of 1873, and in accordance with the decision of the Supreme Court in 1875, the Company, in 1876, brought another suit in the Court of Claims at Washington, for one-half of its charges for 1875, and for arrearages of 1874. To this suit the Gov-

ernment put in a counter-claim for five per cent. of the net earnings of the Company, under the provision of the 6th Section of the act of 1862, which provided that, "After the said road is completed, until said bonds (issued to the Company) and interest are paid, at least five per cent. of the net earnings of said road shall also be annually applied to the payment thereof." The United States, in its counter-claim, alleged that the road was completed November 6, 1869. The Company claimed the legal date of opening to have been October 1, 1874. The Court of Claims decided that the road was opened November 6, 1869; that up to November 6, 1874, the net earnings had amounted to \$28,052,045; five per cent. upon which equaled the sum of \$1,402,602; while the sum due the Company for the time covered by its suit, chiefly for 1875, equaled \$593,627, making a balance of \$303,975, in favor of the Government. From this decision the Company appealed. That of the Supreme Court, rendered at the October term, 1878, but only recently made public, sustained the position of the Government, that the road was completed November 6, 1869; and that net earnings must be calculated from that period. The chief point of interest, however, was the rule by which these were to be ascertained. In reference to this point, the Court (Justice Bradley rendering the decision), after disposing of the question of the date at which the road was opened, said:—

"The question next arising is, what are the net earnings of five per cent. for which the Company became liable to account, and in what manner are they payable?"

"In the first place they are the 'net earnings of the road,' that is, the net earnings of the road as a railroad, including the telegraph. They have nothing to do with the income or profits of the Company as a holder of public lands. The proceeds of this source of income are no part of the earnings of the road. These earnings, however, must be regarded as embracing all the earnings and income derived by the Company from the railroad proper, and all the appendages and appurtenances thereof; including its ferry and bridge at Omaha, its cars, and all its property and apparatus legitimately connected with its railroad." * * * *

"Having considered the question of receipts, or earnings, the next thing in order is the expenditures which are properly chargeable against the gross earnings, in order to arrive at the "net earnings," as this expression is to be understood within the meaning of the act. As a general proposition net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, aside from, and exclusive of, the expenditure of capital laid out in constructing and equipping the works themselves. It may often be difficult to draw a precise line between expenditures for construction and the ordinary expenses incident to operating and maintaining the road and works of a railroad company. Theoretically, the expenses chargeable to earnings include the general expenses of keeping up the organization of the company, and all expenses incurred in operating the works and keeping them in good con-

dition and repair, whilst expenses chargeable to capital include those which are incurred in the original construction of the works, and in the subsequent enlargement and improvement thereof. With regard to the last mentioned class of expenditures, however, namely those which are incurred in enlarging and improving the works, a difference of practice prevails among railroad companies. Some charges to construction include every item of expense, and every part and portion of every item which goes to make the road, and any of its appurtenances or equipments, better than they were before; whilst others charge to ordinary expense account, and against earnings, whatever is taken for those purposes from the earnings, and is not raised upon bonds or issues of stock. The latter method is deemed the most conservative and beneficial for the company, and operates as a restraint against injudicious dividends and the accumulation of a heavy indebtedness. * * * But for making all ordinary improvements, as well as repairs, it is better for the stockholders, and all those who are interested in the prosperity of the enterprise, that a portion of the earnings should be employed. *We think that the true interest of the Government, in this case, is the same as that of the stockholders, and will be subserved by encouraging a liberal application of the earnings to the improvement of the works.* It is better for the ultimate security of the Government in reference to the payment of its loan, as well as for the service which it may require in the transportation of its property and mails, that a hundred dollars should be spent in improving the works, than that it should receive five dollars towards the payment of its subsidy. If the five per cent. of net earnings, demandable from the Company, amounted to a new indebtedness, not due before, like a rent accruing upon a lease, a more rigid rule might be insisted on. But it is not so; the amount of the indebtedness is fixed and unchangeable. The amount of the five per cent. and its receipt at one time or another, is simply a question of earlier or later payment of a debt already fixed in amount. If the employment of any earnings of the road in making improvements lessens the amount of net earnings, the Government loses nothing thereby. The only result is, that a less amount is presently paid on its debt, whilst the general security for the whole debt is largely increased."

As the decision of the Court of Claims was overruled in various particulars, some points having been decided by the Supreme Court in favor of the Government, and some in favor of the Company, the case was sent back with an order that its judgment be made responsive to the decisions of the Court above. This order will involve a full audit of the accounts of the Company in order to determine what proportion of its apparent net earnings, not absorbed by the payment of interest or dividends, has been applied to the improvement of their property. It is sufficient to state here that the amount annually withheld by the Government, being one-half of the charges for transportation on its account, has considerably exceeded the amount of five per cent. of their net earnings; so that during the whole controversy which has now extended through nearly ten years, the Government, not the Railroad Companies, has been and still is the party in default.

THIRD: - THE CREDIT MOBILIER SUIT.

The act of 1873 which authorized the Railroad Company to bring a suit against the United States for the recovery of one-half of the charges withheld from it on account of government transportation also directed (section four) that:

"The Attorney General cause a suit in equity to be instituted in the name of the United States against the Union Pacific Railroad Company, and against all persons who may, in their own names or through any agents, have subscribed for or received capital stock in said road, which stock has not been paid for in full in money, or who may have received, as dividends or otherwise, portions of the capital stock of said road, or the proceeds or avails thereof, or other property of said road, unlawfully or contrary to equity, or who may have received as profits or proceeds of contracts for construction or equipment of said road, or other contracts therewith, moneys or other property which ought, in equity, to belong to said railroad corporation, or who may, under pretense of having complied with the acts to which this is an addition, have wrongfully and unlawfully received from the United States bonds, moneys or lands which ought, in equity, to be accounted for and paid to said Railroad Company or to the United States, and to compel payment for said stock, and the collection and payment of such moneys, and the restoration of such property, or its value, either to said Railroad Corporation or to the United States, whichever shall in equity be held entitled thereto."

Bancroft Library

In pursuance of this act a suit was brought in the Circuit Court of the United States for the District of Connecticut, against the Union Pacific Railroad Company, and all parties in privity with it, in order to compel an account, and the surrender to the Government, or to the Company, for the benefit of the Government, of the moneys improperly received or secured, no matter how or by whom, growing out of the construction of the road. The chief object of the suit was to reach "The Credit Mobilier," a company organized under the laws of the State of Pennsylvania, and which was made use of to avoid a personal liability. Capitalists were willing to put up their money and run the risk of its loss, but they were not willing to destroy the credit necessary for carrying forward their own business operations, nor run the risk of the total loss of their fortunes by becoming general partners in a work admitted on all hands to be hazardous in the extreme. Each one must judge of the propriety of resorting to such intermediary by inquiring how he would act were he similarly placed. The public would not subscribe a dollar to the stock of the Company as an investment. The means for construction, in addition to those provided by Government, or which could be raised on bonds, had to be supplied by a very few capitalists, upon whom the whole hazard of the enterprise was thrown, and who were really, if not nominally, parties to the contract for construction. Their profits

were not increased a dollar by a resort to the intermediary. Those of the parties who took contracts for construction or material were not, in consequence, decreased or diminished a single dollar. The result proved that there was no necessity whatever for such resort, as every claim was met without loss or embarrassment on either side.

Such in its length and breadth was the Credit Mobilier, which at one time made such a stir in the land. It was resorted to for no improper purpose, nor was it ever put to an improper one. Congress, however, believed or affected to believe, that a great offense of some kind had been committed. To the bill which was to investigate and punish it, the defendants, who stood in almost every possible relation to the Railroad Company and to the Government, demurred—denied that, even admitting all the allegations, there was any cause of action against them. The Circuit Court sustained the demurrer. An appeal was then taken to the Supreme Court at Washington. Its decision sustaining that of the court below was rendered at the October term, 1878. In course of it, Justice Miller, delivering the opinion, said :

“The Government sustains two distinct relations to the Railroad Company, and it is important in considering her rights under this statute to keep them separate. The company is organized under an act of Congress. It owes its corporate existence to that act, and the Government has all the rights which belong to any other Government as a sovereign and legislative power over this creation of that power. That this power should not be too much crippled by the doctrine that a charter is a contract, the eighteenth section declares that Congress may, at any time, *having due regard for the rights of the companies named therein*, add to, alter, amend or repeal the act. The power of Congress, therefore, in its sovereign and legislative capacity over this corporation is very great.

“The government, however, holds another very important relation to the company, namely, the relation of contract. It has loaned to the company twenty-seven millions of dollars. It has granted to it, on certain terms, many millions of acres of land. The government is paying all the time the semi-annual interest on its own bonds which it loaned to the company. The company is bound, by contract, to pay the bonds, principal and interest, *at their maturity*. The Government, by the contract, has a lien on the road and its appurtenances to secure this payment. The company is also bound, by the contract, to perform for the Government all that may be required of it, of transportation and telegraphing, and to keep its road always in order and readiness to do this. There may be other contract obligations of the company to the Government not here mentioned, but these are all that are important to our inquiry. The Government has delivered its bonds to the company. The company has built the road, owns it, and operates it. Is there anything growing out of this contract, alleged in the bill, for which the United States is entitled to relief?

“One of the allegations of the bill is, that there is due to the United States and unpaid, on account of interest on the bonds, the sum of six million one hundred and ninety-eight thousand and seven hundred dollars, and that the balance of interest for which the company is liable is rapidly accumulating. The bill in this case was

filed in May, 1873, and this Court decided at its October Term, 1875, in a suit between the same parties, that the company was *not* bound to pay this interest until the maturity of the bonds, except so far as the act made two special provisions on that subject. One of them was that half the compensation for transportation, performed for the United States should, as provided by the subsequent amended charter of 1864, be withheld by the Government for that purpose. Another was a provision that after the road should be completed, five per cent. of the net earnings of the road should be applied annually to extinguish the debt of the United States."

* * * * *

"There is therefore no ground for relief on account of money due by defendant to the plaintiff."

* * * * *

"The Government made its contract and bargained for its security. It had a first lien on the road by the original act of incorporation; which would have made its loan safe in any event. But in its anxiety to secure the construction of the road, an end more important to the Government than to any one else, and still more important to the people whom it represented, it *postponed this lien to another mortgage, that the means might be raised to complete it.* The Government has the second lien, however, and it has the right to appropriate one-half of the price it pays for the use of the road—a very large sum—annually, and five per cent. of the net earnings of the road, which may become larger, to the extinction of this debt. It is not wholly unreasonable to suggest that the amount which the company may be compelled to pay annually, under these two provisions, will be sufficient as a sinking fund to pay the entire debt, principal and interest, before it falls due.

"It is difficult to see any right which the Government has, as a creditor, to interfere between the corporation and those with whom it deals. It has been careful to look out for itself in making the contract, and it has the right which that contract gives. What more can it ask? It is true that there is an allegation of insolvency. But in what that insolvency consists is not clearly shown. It has a floating debt. But what railroad company has not? It is said it does not pay the interest on its debt to the United States. *We have shown that it owes the United States no money that is due.* There is no allegation that it does not pay the interest on all its own funded debt. The allegation, as it is, would be wholly insufficient to plate the corporation in bankruptcy, even if that was not forbidden by the act under which this bill is drawn. *The facts stated are utterly insufficient to support a creditor's bill by the United States.* That requires a judgment at law, an execution issued, and a return of *nulla bona*. Here there is no judgment, no money due, and no sufficient allegation of insolvency.

"We are unable, therefore, to see any relief which the United States would be entitled to in a court of equity, under this bill, on account of its contract relations with the defendant.

"In its sovereign or legislative relation to this corporation, the United States has powers, the extent of which it is unnecessary to define in this case. The two sections of the act, under one of which this suit was instituted, are exercises of this power. They affect the interest of the corporation in important particulars. In addition to this, Congress might have directed the Attorney-General, by this bill, as a part of this proceeding, or as an independent one, to ask the Court to declare the franchises of the Company forfeited. It

might have ordered a bill to inquire if the Company was insolvent, and if so, to wind up its affairs and distribute its assets. In short, there are many modes in which the Legislature could have called into operation the judicial powers known to the law. But it has not done so, *and that is the constantly recurring answer to this bill.*"

The effect of the decision last given was little more than to affirm and sustain that of 1875, which declared that the interest accruing on the Government bonds was not a debt for which the Companies were immediately to provide, and that the Government must pay over one-half of the transportation charges on its account. The Government had all the security it intended to exact—a second lien on a railroad worth more than three times the amount of its loan. It was not a matter of the least interest or importance to it, under what kind of contracts the roads were built. They were built, and Government had its security, and must wait for the payment of its advances, principal and interest, till they fall due. The clause in the act authorizing a suit in its behalf, was intended to be a grand scoop-net to bring before the courts, and punish, all offenders. Yet the ingenuity of Congress could not draft an act, nor the skill of the ablest counsel frame a case, which the Supreme Court would accept as impugning the integrity and good faith of the Company.

FOURTH:—THE THURMAN SINKING-FUND BILL.

The preceding decisions are an authoritative interpretation, by the highest tribunal in the land, of the act incorporating the Pacific Railroads, and of the acts amendatory thereof. The Supreme Court of the United States is not only the proper arbiter in all such matters, but it was, up to a certain stage, the recognized and selected arbiter by Government as well as by the Railroad Companies. The relations of the two, growing out of the act of the incorporation, were substantially settled by the decision of 1875; yet, in the face of this decision, and pending the action brought by itself for the purpose of overhauling the Union Pacific Railroad, as well as of the action brought by the Railroad Company to determine the question of *net* earnings, Congress, by the famous "Thurman Bill," passed May 8, 1878, deliberately undertook to override the decision of the Supreme Court, and to seize and withhold a much larger sum than the whole of the charges for Government transportation and the five per cent. of net earnings, under the pretense of establishing a sinking fund out of the earnings of the Companies, for the purpose of retiring their bonds at their maturity. That bill (section 4) provided that:

"There shall be carried to the credit of the said (sinking) fund (created by this act) on the first day of February in each year, the one-half of the compensation for services hereinbefore named,

rendered for the Government by the said Central Pacific Railroad Company, not applied in liquidation of interest; and, in *addition* thereto, the said Company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of \$1,200,000, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States, under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amounting in the aggregate to twenty-five per centum of the whole net earnings of the said Railroad Company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding."

The preceding section required from the Union Pacific Railroad Company the sum of \$300,000 annually, in addition to one-half of the earnings on Government account; or a sum which, added to such half, would equal 25 per cent. of the net earnings of the Company. The amount required annually by the Thurman Bill from each Company is about twice as large as that which each would be required to pay by the terms of their Charter.

The decisions of the Supreme Court of the United States, that no moneys are due from the Pacific Railroad Companies to the Government on account of the advances made by it, and that the only amounts it can claim in future are the one-half of charges for transportation on its account, and five per cent. of the net earnings of the Companies, and the action of Congress attempting to compel the payment of an annual sum nearly twice greater than that required by law, present the whole question now in controversy. There is no pretense that Government does not hold ample security for every dollar it has advanced with all the interest which may accrue. With such security should not Government be held as much as an individual to the observance of good faith in the contracts into which it has entered? Can it act otherwise; or rather, are not the rights of the Companies such as cannot be overridden by any act of Congress of the nature of the Thurman Bill? Is it not certain that Congress possesses no such power as it presumed to exercise by virtue of this Bill? In the construction of contracts to which it is a party is not the Supreme Court the sole authoritative tribunal? When Government itself has resorted to said tribunal in vindication of its rights under contracts to which it is a party, can it, when the decision is against it, take the law into its own hands? In the presence of such a question, the rightful ownership of a few hundred thousand, or a few million of dollars sinks into utter insignificance. It is a question that lies at the very root of society. If the action of Congress is to stand, we are no longer a free people, but the victims of blind passion or caprice far more to be dreaded than a relentless despotism.

FIFTH :--THE RIGHT OF CONGRESS TO ANNUL THE CHARTERS OF THE
PACIFIC RAILROAD COMPANIES.

The questions so far passed upon by the Supreme Court related to contracts into which the Government and the Railroad Companies had entered. The question of annulling or repealing their charters was not raised. It might have been raised; but when raised, the decision in it, the Court declared in its judgment in the *Credit Mobilier* Case, rested with itself, not with the Government. There are rights to be adjudicated upon in proceedings for such repeal, for the determining of which Congress has no more competency or power than it has for determining rights arising under contracts to which the Government is a party. Congress is not a Court of Law with power to summon and examine witnesses, and, with the assistance of juries, to render judgments in damages, and issue the proper processes for their execution. Wherever rights are reserved in a charter granted by it, Congress must make use of some other tribunal than itself for determining them, as a condition precedent and absolutely necessary to give any validity to any declaration of repeal of its own. No principle, or rule of procedure, is better recognized than this under all governments that are not despotisms. When Congress has created a corporation, and when in the exercise of its proper functions such corporation has raised on its securities, and invested in its works, large sums of money, Congress can no more reclaim its grants without cause, than it can seize indiscriminately, and without an equivalent, the property of any citizen. Ours is a Constitutional Government with a careful and jealous limitation of its powers, when the rights of the people are concerned. To determine rights dependent upon a charter, Courts of Law must always be resorted to, before which Government and the corporations created by it are litigants on equal terms. All are alike within the domain and restraint of law. Should Congress without any adjudication by the Courts declare the Pacific Railroad Corporations forfeit, and proceed to take possession of their roads or property, it or its agents would be immediately restrained by a higher law in the premises than its own. In all such matters the Government is a party, not a court. To be party and judge, would be to make the will of the stronger law;—in other words, would override law in its relations to all others. This is pure tyranny, which, however much it may obtain in Congress, has fortunately its proper corrective in the Supreme Court of the United States, to which, when the question of right comes before it, the Government of the United States, or rather its servants, are just as amenable as the humblest citizen in the land.

SIXTH:—WHAT THE COMPANIES HAVE ACCOMPLISHED FOR THE GOVERNMENT AND THE COUNTRY.

It is not necessary here to refer, at any length, to the wholly unmerited obloquy and abuse of which, for several years past, the two companies have been made the victims. It is doubtful whether a more striking example of the vicissitudes of public opinion, or popular caprice, can be found than in the treatment which they have received. The proposition for the construction of a railroad across the continent, at the very moment that the nation was in the throes of civil war, the event of which seemed wholly uncertain, was regarded as a forlorn hope, in which, as you and I well know, none but the adventurous could be brought to engage. Well invested capital, as well as all conservative minds, shrank back in dismay from all solicitations to engage in the work, which must have been a disastrous failure but for the fortunate discovery, then not made, of coal at favorable points on its line. The companies were allowed fifteen years for its completion. They anticipated, by eight years, the allotted time. Its completion was hailed as the greatest achievement of the kind, as it was at the time, of human enterprise and skill. The nation rang with pæans sung in praise of those resolute and competent spirits to whom it owed so much. The road traversing more than two thousand miles of unoccupied territory, and crossing mountain ranges at elevations far exceeding the loftiest summits on the Atlantic slope, has accomplished far more than was predicted of or hoped from it. It has filled with busy and prosperous communities a desert waste, which but for it must have still remained a desert waste. It has indissolubly united, as it was intended to unite, the two slopes of the continent, and made the nation a geographical and commercial, as well as a political and social, unit. It has been the sole condition of opening and developing the mineral wealth, now the wonder of the world, of the interior of the continent; and is the instrument by which, and by which alone, the nation can resume specie payments without drawing from or disturbing the reserves of the old world. In order to reach this great national artery, more than ten thousand miles of railroad, costing more than \$500,000,000, have been built, which, but for it, would not have been built. The increased value of the property of the country, due to its construction, exceeds five times its cost. The direct advantage to the people, resulting from its construction, exceeds five times the amount of the public subsidy. They could far better lose a sum equaling many times the cost of the line than be without it. When the proposition of a railroad across the continent was first seriously proposed, the Secretary of War, in response to a call of the House of Repre-

sentatives under date of March 18, 1862 (see Executive Document 80 of that year), stated that the annual cost of transportation of troops and munitions of war between the Mississippi River and the Pacific Coast and intermediate points equalled \$5,809,431. The cost of transporting the mails between the same points was \$1,500,000 annually, making a total expenditure of \$7,309,431 annually. The cost to Government for a similar, and in fact a much greater service, does not, in the sums paid to the railroads for the past nine years, exceed the sum of \$2,000,000 annually. The saving to Government in the matter of its own transportation due to their construction has exceeded \$5,000,000 annually, or a total sum of \$45,000,000. Such savings are among the least advantages resulting from their construction. But for this road the nation would require a military force vastly greater than that now maintained. As an instrument for opening the interior of the continent, adding to its wealth, and in stimulating its production and trade, the value of the Pacific Railroads is beyond computation.

It was no sooner opened, however, than the services of the past were speedily forgotten. Those who had accomplished such a vast and beneficent achievement, were, in a few short years, transformed into remorseless Shylocks, gorging upon the life-blood of the nation, deserving the severest punishment that the law could inflict. It was not enough that all legal tribunals open to the Government were resorted to. Congress in its zeal outdid the most clamorous patriot on the stump. It passed an act to seize outright, and in violation of all law, one-quarter of all the net earnings of the two companies, to be applied to debt which will hardly be payable during the present generation. The Companies could only yield to the storm, till their rights could be vindicated by a higher power than that of Congress itself. By that power, which cannot be impeached for its competency, its knowledge of the law, or as a corrupt receiver of bribes, the Companies have been fully vindicated, and now stand before the world without a blemish, or an insinuation that has not been fully refuted. At the end of their long struggle for the maintenance of their rights, they are, in their determined resistance to lawless oppression to which in the end every citizen may in his turn be exposed, as much entitled to the gratitude of the public as when they received it in such full measure, for the great work which, with dauntless energy and resolution, they carried to a speedy conclusion in the face of obstacles far greater than those which ever opposed themselves to any similar enterprise.

I have the honor to be,

Very respectfully,

HENRY V. POOR.

